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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,046	07/13/2005	Hiroyuki Fujimoto	MAM-069	6347

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EXAMINER

MARTIN, ANGELA J

ART UNIT	PAPER NUMBER
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1745

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/542,046

Applicant(s)

FUJIMOTO ET AL.

Examiner

Angela J. Martin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/13/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5-11 are provisionally rejected under 35 U.S.C. 102(e) as being anticipated by copending Application No. 2005/0233217 A1 which has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e), if published under 35 U.S.C. 122(b) or patented. This provisional rejection under 35 U.S.C. 102(e) is based upon a presumption of future publication or patenting of the copending application.

This provisional rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131. This rejection may not be overcome by the filing of a terminal disclaimer. See *In re Bartfeld*, 925 F.2d 1450, 17 USPQ2d 1885 (Fed. Cir. 1991).

3. Claims 1, 5-11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fujihara et al., U.S. Pat. Application Pub. 2005/0233217 A1.

Rejection of claims 1, 5-11 drawn to a battery.

Fujihara et al., teach a nonaqueous electrolyte secondary battery using a material capable of storing and releasing lithium as a negative electrode material and a lithium transition metal complex oxide containing Ni and Mn as the transition metal and having a layered structure as a positive electrode material (abstract) said secondary battery being characterized in that said lithium transition metal complex oxide has a BET specific surface area of less than 3 m²/g (0079), and that an outer casing of said battery is composed at least partly of an aluminum alloy or aluminum laminate film having a thickness of up to 0.5 mm (0017) and susceptible to deformation in case of internal pressure buildup due to gas generation within the battery during storage (0090). The nonaqueous electrolyte secondary battery as recited in claim 1, characterized in that said lithium transition metal complex oxide is represented by the formula $\text{Li}_{.a}\text{Mn}_{.x}\text{Ni}_{.y}\text{Co}_{.z}\text{O}_{.2}$ (wherein a,

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x, y and z are numbers satisfying $0 \leq a \leq 1.2$, $x+y+z=1$, $x > 0$, $y > 0$ and $z \geq 0$ (0050, 0075). The nonaqueous electrolyte secondary battery as recited in claim 1, characterized in that said lithium transition metal complex oxide contains substantially the same amount of nickel and manganese (0050, 0075). The nonaqueous electrolyte secondary battery as recited in claim 1, characterized in that said lithium transition metal complex oxide has a BET specific surface area of not greater than $2 \text{ m}^2/\text{g}$ (0079). The nonaqueous electrolyte secondary battery as recited in claim 5, characterized in that said lithium transition metal complex oxide contains substantially the same amount of nickel and manganese (0050, 0075). The nonaqueous electrolyte secondary battery as recited in claim 5, characterized in that said lithium transition metal complex oxide has a BET specific surface area of not greater than $2 \text{ m}^2/\text{g}$ (0079). The nonaqueous electrolyte secondary battery as recited in claim 6, characterized in that said lithium transition metal complex oxide has a BET specific surface area of not greater than $2 \text{ m}^2/\text{g}$ (0079). The nonaqueous electrolyte secondary battery as recited in claim 8, characterized in that said lithium transition metal complex oxide has a BET specific surface area of not greater than $2 \text{ m}^2/\text{g}$ (0079).

Thus, the claims are anticipated.

However, if the claims are not anticipated, in the alternative, they are obvious because although Fujihara et al., do not teach a pH value within the range of 9.0-11.0 when it is immersed in purified water in the amount of 5 g per 50 ml of the purified water, the pH would be in the range of 9-11 since Fujihara teaches the same positive electrode material as the Application.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

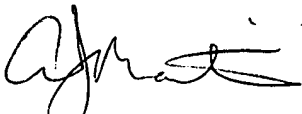
Inamasu, JP 07-142093 (machine translation), teaches a nonaqueous electrolyte secondary battery using a material capable of storing and releasing lithium as a negative electrode material and a lithium transition metal complex oxide containing Ni and Mn as the transition metal and having a layered structure as a positive electrode material (abstract) and a pH value within the range of 9.0-11.0 when it is immersed in purified water in the amount of 5 g per 50 ml of the purified water (abstract; 0008).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Martin whose telephone number is 571-272-1288. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



AJM